



DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2701-21; DHS Docket No. USCIS-2021-0020]

RIN 1615-ZB90

Implementation of Employment Authorization for Individuals Covered by Deferred

Enforced Departure for Hong Kong

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security.

ACTION: Notice.

SUMMARY: On August 5, 2021, President Joseph Biden issued a memorandum to the Secretary of State and the Secretary of Homeland Security (Secretary) directing the Secretary to take appropriate measures to defer for 18 months, through February 5, 2023, the removal of certain Hong Kong residents present in the United States. This Notice provides information about Deferred Enforced Departure (DED) for certain eligible Hong Kong residents and provides information on how eligible individuals may apply for DED-related Employment Authorization Documents (EADs) with USCIS. For the purposes of this Notice, a Hong Kong resident is defined as an individual of any nationality, or without nationality, who has met the requirements for, and been granted, a Hong Kong Special Administrative Region Passport, a British National Overseas Passport, a British Overseas Citizen Passport, a Hong Kong Permanent Identity card, or a Hong Kong Special Administrative Region (HKSAR) Document of Identity for Visa Purposes.

DATES: DED and employment authorization for noncitizens covered under DED for Hong Kong is effective from August 5, 2021 through February 5, 2023. The procedures for employment authorization in this Notice apply only to noncitizens who are Hong Kong residents,

who are present in the United States as of August 5, 2021, and who meet other eligibility criteria for DED described below.

FOR FURTHER INFORMATION CONTACT: You may contact Andria Strano, Acting Division Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800-375-5283.

ADDRESSES:

- For further information on DED, including additional information on eligibility, please visit the USCIS DED webpage at uscis.gov/humanitarian/deferred-enforced-departure. You can find specific information about DED for Hong Kong by selecting “DED Granted Region: Hong Kong” from the menu on the left of the DED webpage.
- If you have additional questions about DED, please visit uscis.gov/tools. Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at uscis.gov, or visit the USCIS Contact Center at uscis.gov/contactcenter.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CFR – Code of Federal Regulations

DED – Deferred Enforced Departure

DHS – U.S. Department of Homeland Security

EAD – Employment Authorization Document

FNC – Final Non-confirmation

Form I-765 – Application for Employment Authorization

Form I-9 – Employment Eligibility Verification

Form I-912 – Request for Fee Waiver

FR – Federal Register

Government – U.S. Government

IER – U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights
Section

SAVE – USCIS Systematic Alien Verification for Entitlements Program

Secretary – Secretary of Homeland Security

TNC – Tentative Non-confirmation

TPS – Temporary Protected Status

TTY – Text Telephone

USCIS – U.S. Citizenship and Immigration Services

U.S.C. – United States Code

Purpose of this Action

Pursuant to the President’s constitutional authority to conduct the foreign relations of the United States, President Biden has concluded that foreign policy considerations warrant implementing DED for Hong Kong through February 5, 2023.¹ Through this Notice, as directed by the President, DHS is establishing procedures for individuals covered by DED for Hong Kong to apply for employment authorization through February 5, 2023.

What is Deferred Enforced Departure (DED)?

¹ See Presidential Memorandum for the Secretary of State and the Secretary of Homeland Security on the Deferred Enforced Departure for Certain Hong Kong Residents August 5, 2021, *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/memorandum-on-the-deferred-enforced-departure-for-certain-hong-kong-residents/>

- DED is an administrative stay of removal ordered by the President. The authority to grant DED arises from the President's constitutional authority to conduct the foreign relations of the United States. The President can authorize DED for any reason related to this authority. DED has been authorized in situations where foreign nationals or other groups of noncitizens may face danger if required to return to countries or any part of such foreign countries experiencing political instability, conflict, or other unsafe conditions, or when there are other foreign policy reasons for allowing a designated group of noncitizens to remain in the United States.
- Although DED is not a specific immigration status, individuals covered by DED are not subject to removal from the United States, usually for a designated period of time. Furthermore, the President may direct that certain benefits, such as employment authorization or travel authorization, be available to the noncitizens covered by the DED directive.
- If the President provides for employment or travel authorization, USCIS administers those benefits. USCIS publishes a *Federal Register* notice to instruct the covered population on how to apply for any benefits provided.
- The President issues directives regarding DED and who is covered via presidential memorandum. The qualification requirements for individuals who are covered under DED are based on the terms of the President's directive regarding DED and any relevant implementing requirements established by DHS. Since DED is a directive not to remove particular individuals, rather than a specific immigration status like Temporary Protected Status (TPS), there is no DED application form required to obtain DED coverage.

The Presidential Memorandum ordering DED for Hong Kong can be found at:
<https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/memorandum-on-the-deferred-enforced-departure-for-certain-hong-kong-residents/>

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Director,

U.S. Citizenship and Immigration Services

Eligibility and Employment Authorization for DED

How will I know if I am eligible for employment authorization under the DED Presidential Memorandum for Hong Kong?

The procedures for employment authorization in this Notice apply only to non-U.S. citizens who are Hong Kong residents (regardless of their country of birth), who are present in the United States as of August 5, 2021, except for noncitizens:

- who have voluntarily returned to Hong Kong or the People's Republic of China (PRC) after August 5, 2021;
- who have not continuously resided in the United States since August 5, 2021;
- who are inadmissible under section 212(a)(3) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(3)) or deportable under section 237(a)(4) of the INA (8 U.S.C. 1227(a)(4));
- who have been convicted of any felony or two or more misdemeanors committed in the United States, or who meet the criteria set forth in section 208(b)(2)(A) of the INA (8 U.S.C. 1158(b)(2)(A));
- who are subject to extradition;

- whose presence in the United States the Secretary has determined is not in the interest of the United States or presents a danger to public safety; or
- whose presence in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States.

What will I need to file if I am covered by DED and would like to obtain employment authorization?

If you are covered under DED for Hong Kong and would like to work on a DED-related EAD, you must apply for an EAD by filing an Application for Employment Authorization (Form I-765). Please carefully follow the Form I-765 instructions when completing the application for an EAD. When filing the Form I-765, you must:

- Indicate that you are eligible for DED by entering “(a)(11)” in response to Question 27 on the Form I-765; and
- Submit the fee for the Form I-765 (or request a fee waiver).

The regulations require individuals covered under DED who request an EAD to pay the fee prescribed in 8 CFR 103.7 for the Form I-765. *See also* 8 CFR 274a.12(a)(11) (employment authorization for DED-covered individuals); and 8 CFR 274a.13(a) (requirement to file EAD application if EAD desired). If you are unable to pay the fee, you may request a fee waiver by completing a Request for Fee Waiver (Form I-912).

Supporting Documentation

The filing instructions on Form I-765 list all the documents needed. You may also find information on the initial required documents on the USCIS website at <https://www.uscis.gov/i-765>. If USCIS determines after reviewing your submission that it needs additional information, it will issue you a Request for Evidence (RFE).

How will I know if USCIS will need to obtain biometrics?

If biometrics are required to produce your EAD, you will be notified by USCIS and scheduled for an appointment at a USCIS Application Support Center.

Where do I submit my completed DED-based Application for Employment Authorization (Form I-765)?

For DED, mail your completed Form I-765 and supporting documentation to the proper address in Table 1 below.

Table 1-Mailing Addresses

If...	Mail to...
You are applying through the U.S. Postal Service	USCIS Attn: DED Hong Kong PO Box 805283 Chicago, IL 60680- 5283
You are using FedEx, UPS, or DHL	USCIS Attn: DED Hong Kong (Box 805283) 131 South Dearborn – 3 rd Floor Chicago, IL 60603-5517

Can I file my DED-based Form I-765 electronically?

No. Electronic filing is not available when filing Form I-765 based on DED.

What happens after February 5, 2023, for purposes of DED-based employment authorization?

This DED authorization is set to end on February 5, 2023. After that date, employers can no longer accept EADs with a category code of A11 and a February 5, 2023, expiration date, and employees will need to present other evidence of continued work authorization.

Travel

In its discretion, DHS may provide travel authorization as a benefit of DED for eligible Hong Kong residents. You must file for advance parole if you wish to travel outside the United States. Advance parole gives you permission to leave the United States and return during a specified period. To request advance parole, you must file Form I-131, Application for Travel

Document, available at www.uscis.gov/i-131. You may file Form I-131 with Form I-765 or separately. When filing the Form I-131, you must:

- Select Item Number 1.d. in Part 2 on the Form I-131; and
- Submit the fee for the Form I-131.

If you leave the United States without first receiving advance parole, you may no longer be eligible for DED and may not be permitted to reenter the United States. Please also be advised that if you return to Hong Kong or the PRC, you may not be permitted to resume DED in the United States since the presidential memorandum providing for DED for certain Hong Kong residents excludes individuals who have voluntarily returned to Hong Kong or the PRC after August 5, 2021.²

Mailing Information

Mail your application for Form I-131 to the proper address in Table 1.

Supporting Documentation

The filing instructions on Form I-131 list all the documents needed. You may also find information on the acceptable documentation and DED eligibility on the USCIS website at www.uscis.gov/humanitarian/deferred-enforced-departure. If USCIS needs additional evidence, it will issue you an RFE.

General employment-related information for individuals with DED-based employment authorization and their employers:

How can I obtain information on the status of my EAD request?

To get case status information about your DED-based EAD request, you can check Case Status Online at uscis.gov, or visit the USCIS Contact Center at uscis.gov/contactcenter. If your

² Ibid.

Form I-765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at egov.uscis.gov/e-request/Intro.do or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I-9?

You can find the Lists of Acceptable Documents on the third page of Form I-9, Employment Eligibility Verification, as well as the Acceptable Documents webpage at uscis.gov/i-9-central/acceptable-documents. Employers must complete Form I-9 to verify the identity and employment authorization of all new employees hired after November 6, 1986. Within three business days of hire, employees must present acceptable document(s) to their employers as evidence of identity and employment authorization to satisfy Form I-9 requirements and employers must complete Section 2 of the Form I-9. For employment that will last less than three days, Section 2 of the Form I-9 must be completed no later than the first day of work for pay.

You may present any documentation from List A (which provides evidence of both identity and employment authorization) or documentation from List B (which provides evidence of your identity) together with documentation from List C (which provides evidence of employment authorization), or where applicable you may present an acceptable receipt. Receipts may not be accepted if employment will last less than three days. Additional information on receipts is available at www.uscis.gov/i-9-central/form-i-9-acceptable-documents/receipts. Employers may not reject a document based on a future expiration date. You can find additional information about Form I-9 on the I-9 Central webpage at uscis.gov/I-9Central. An EAD is an acceptable document under List A.

If I have an EAD based on another immigration status, can I obtain a new DED-based EAD?

Yes, if you are eligible for DED, you can obtain a new EAD, regardless of whether you have an EAD based on another immigration status. If you want to obtain a DED-based EAD valid through February 5, 2023, then you must file Form I-765 and pay the associated fee.

Can my employer require that I provide any other documentation to prove my status, such as proof of my Hong Kong residency?

No. When completing Form I-9, employers must accept any documentation that appears on the Form I-9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Therefore, employers may not request proof of Hong Kong residency when completing Form I-9 for new hires or reverifying the employment authorization of current employees. Refer to the “Note to Employees” section of this *Federal Register* notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This *Federal Register* notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email USCIS at I-9Central@dhs.gov. USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I-9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800-255-8155

(TTY 800-237-2515). IER offers language interpretation in numerous languages. Employers may also email IER at IER@usdoj.gov.

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY 877-875-6028) or email USCIS at I-9Central@dhs.gov. USCIS accepts calls in English, Spanish and many other languages. Employees or applicants may also call the IER Worker Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Form I-9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt. Employers may not require extra or additional documentation beyond what is required for Form I-9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of Tentative Non-confirmation (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I-9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of the TNC while the case is still pending with E-Verify. A Final Non-confirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800-255-

7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Form I-9 and E-Verify procedures is available on the IER website at justice.gov/ier and the USCIS and E-Verify websites at uscis.gov/i-9-central and e-verify.gov.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, individuals may present their A11 EAD to show they are covered by DED. However, while Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency your A11 EAD or other DHS-issued documentation showing you are covered under DED and/or showing you are authorized to work based on DED. Check with the government agency regarding which documentation the agency will accept.

Some benefit-granting agencies use the Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. SAVE can verify when an individual has DED based on the documentation above. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at uscis.gov/save/save-casecheck, then by clicking the “Check Your Case” button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and SAVE verification case number or an immigration identifier number that you provided to the benefit-granting agency. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency’s procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the response is

correct, find detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records on the SAVE website at www.uscis.gov/save.

[FR Doc. 2021-23012 Filed: 10/20/2021 8:45 am; Publication Date: 10/21/2021]